

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2014 NOV -7 PM 4: 32
S.D. OF N.Y.W.P.

-----X
MALIBU MEDIA, LLC,
:
Plaintiff, :
:
vs. :
:
JOHN DOE subscriber assigned IP address :
69.206.165.130, :
:
Defendant. :
-----X

Civil Action No. _____

**COMPLAINT – ACTION FOR
DAMAGES FOR PROPERTY
RIGHTS INFRINGEMENT**

14 CIV. 8896

JUDGE BRICCIOTTI

Plaintiff, Malibu Media, LLC, sues Defendant John Doe subscriber assigned IP address 69.206.165.130, and alleges:

Introduction

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).
2. Defendant is a persistent online infringer of Plaintiff’s copyrights. Indeed, Defendant’s IP address as set forth on Exhibit A was used to illegally distribute each of the copyrighted movies set forth on Exhibit B.
3. Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the “Copyrights-in-Suit”).

Jurisdiction And Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).

5. Plaintiff used proven IP address geolocation technology which has consistently worked in similar cases to ensure that the Defendant's acts of copyright infringement occurred using an Internet Protocol address ("IP address") traced to a physical address located within this District, and therefore this Court has personal jurisdiction over the Defendant because (i) Defendant committed the tortious conduct alleged in this Complaint in this State, and (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State.

6. Based upon experience filing over 1,000 cases the geolocation technology used by Plaintiff has proven to be accurate to the District level in over 99% of the cases.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Defendant resides (and therefore can be found) in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because Defendant or Defendant's agent resides or may be found in this District.

Parties

8. Plaintiff, Malibu Media, LLC, (d/b/a "X-Art.com") is a limited liability company organized and existing under the laws of the State of California and has its principal place of business located at 409 W. Olympic Blvd., Suite 501, Los Angeles, CA, 90015.

9. Plaintiff only knows Defendant by his, her or its IP Address. Defendant's IP address is set forth on Exhibit A.

10. Defendant's Internet Service Provider can identify the Defendant.

Factual Background

I. Defendant Used the BitTorrent File Distribution Network To Infringe Plaintiff's Copyrights

11. The BitTorrent file distribution network (“BitTorrent”) is one of the most common peer-to-peer file sharing systems used for distributing large amounts of data, including, but not limited to, digital movie files.

12. BitTorrent’s popularity stems from the ability of users to directly interact with each other in order to distribute a large file without creating a heavy load on any individual source computer and/or network. The methodology of BitTorrent allows users to interact directly with each other, thus avoiding the need for intermediary host websites which are subject to DMCA take down notices and potential regulatory enforcement actions.

13. In order to distribute a large file, the BitTorrent protocol breaks a file into many small pieces called bits. Users then exchange these small bits among each other instead of attempting to distribute a much larger digital file.

14. After the infringer receives all of the bits of a digital media file, the infringer’s BitTorrent client software reassembles the bits so that the file may be opened and utilized.

15. Each bit of a BitTorrent file is assigned a unique cryptographic hash value.

16. The cryptographic hash value of the bit (“bit hash”) acts as that bit’s unique digital fingerprint. Every digital file has one single possible cryptographic hash value correlating to it. The BitTorrent protocol utilizes cryptographic hash values to ensure each bit is properly routed amongst BitTorrent users as they engage in file sharing.

17. The entirety of the digital media file also has a unique cryptographic hash value (“file hash”), which acts as a digital fingerprint identifying the digital media file (e.g. a movie). Once infringers complete downloading all bits which comprise a digital media file, the

BitTorrent software uses the file hash to determine that the file is complete and accurate.

18. Plaintiff's investigator, IPP International UG, established a direct TCP/IP connection with the Defendant's IP address as set forth on Exhibit A.

19. IPP International UG downloaded from Defendant one or more bits of each of the digital movie files identified by the file hashes on Exhibit A.

20. Defendant downloaded, copied, and distributed a complete copy of Plaintiff's movies without authorization as enumerated on Exhibit A.

21. Each of the cryptographic file hashes as set forth on Exhibit A correlates to a copyrighted movie owned by Plaintiff as identified on Exhibit B.

22. IPP International UG downloaded from Defendant one or more bits of each file hash listed on Exhibit A. IPP International UG further downloaded a full copy of each file hash from the BitTorrent file distribution network and confirmed through independent calculation that the file hash matched what is listed on Exhibit A. IPP International UG then verified that the digital media file correlating to each file hash listed on Exhibit A contained a copy of a movie which is identical (or alternatively, strikingly similar or substantially similar) to the movie associated with that file hash on Exhibit A. At no time did IPP International UG upload Plaintiff's copyrighted content to any other BitTorrent user.

23. IPP International UG connected, over a course of time, with Defendant's IP address for each hash value as listed on Exhibit A. The most recent TCP/IP connection between IPP and the Defendant's IP address for each file hash value listed on Exhibit A is included within the column labeled Hit Date UTC. UTC refers to Universal Time which is utilized for air traffic control as well as for computer forensic purposes.

24. An overview of the Copyrights-in-Suit, including each hit date, date of first

publication, registration date, and registration number issued by the United States Copyright Office is set forth on Exhibit B.

25. Plaintiff's evidence establishes that Defendant is a habitual and persistent BitTorrent user and copyright infringer.

Miscellaneous

26. All conditions precedent to bringing this action have occurred or been waived.

27. Plaintiff has retained counsel and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Infringement Against Defendant

28. The allegations contained in paragraphs 1-27 are hereby re-alleged as if fully set forth herein.

29. Plaintiff is the owner of the Copyrights-in-Suit, as outlined in Exhibit B, each of which covers an original work of authorship.

30. By using BitTorrent, Defendant copied and distributed the constituent elements of each of the original works covered by the Copyrights-in-Suit.

31. Plaintiff did not authorize, permit or consent to Defendant's distribution of its works.

32. As a result of the foregoing, Defendant violated Plaintiff's exclusive right to:

(A) Reproduce the works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

(B) Redistribute copies of the works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

(C) Perform the copyrighted works, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the works' images in any sequence and/or by making the sounds accompanying the

works audible and transmitting said performance of the works, by means of a device or process, to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

(D) Display the copyrighted works, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the works nonsequentially and transmitting said display of the works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

33. Defendant's infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Permanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted works;

(B) Order that Defendant delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that Defendant delete and permanently remove the infringing copies of the works Defendant has on computers under Defendant's possession, custody or control;

(D) Award Plaintiff statutory damages per infringed Work pursuant to 17 U.S.C. § 504-(a) and (c);


(E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

(F) Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

By: 

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Attorneys for Plaintiff

File Hashes for IP Address 69.206.165.130

ISP: Time Warner Cable

Physical Location: Goshen, NY

Hit Date UTC	File Hash	Title
09/01/2014 03:06:43	B12DDFB5629E9E6E9B1C1CFD3EDAE5F2DD0FA6A9	Sexy En Noir
08/30/2014 20:17:02	CBDBC450F4AADB48BC97D2C9BDABA3611DCAE7CB	Erotic Stretching and Sex
08/30/2014 20:02:47	B395E68C9BEA5B3E8DFAA043D793C0049EE06F71	My Naughty Girl
06/21/2014 14:13:39	3E06EF26C1B94E7C829EB19CE8A73FFCC7B6ED5	Lovers Way
05/31/2014 12:50:15	801B6EB9DE54E2428B0163FF2A607DCC3B4BD00D	High School Dropouts
05/25/2014 18:31:56	AF9D652D97024EFC57B36A74B29B09A72AA8E38B	Epic Love
05/13/2014 13:20:30	521239E94E3D266ABE97FB056834038A2A43A9DF	A Thought of You Part 2
04/27/2014 11:14:36	B6EDA8B2257BBD5613187696D1DECA9E3E3450F9	Tantric Massage
04/19/2014 16:29:31	A9BCA2E174A4BA8107D652019219B114D9D43481	Group Sex
04/18/2014 17:44:33	EBB3BD5C5DA9BECDF46F284E56536B1B93F222B3	Double Tease
04/16/2014 11:15:55	4479F2E6372A97F8E31C47EAD580D0DF8304C40A	Pretty Little Belle
04/05/2014 14:59:29	701E03BAAE78E105C4810427C4037C721EA4421B	Russian Connection
04/05/2014 14:58:31	E1AAE12FB1B083F17BBEDF9AC373A7F45C89AC2E	My Days in Rome
04/01/2014 12:45:13	3D30E69B2A688449B0F4E696FE06132DA638B4B8	Just the Three of Us
03/21/2014 15:19:07	A1AD1EFC25ECACCAF835F06862CEB5EC40D1289F	Deep Blue Passion
03/02/2014 16:18:10	531145D437E56B7733561D314EB64CF23AB3B5D1	Risky Business
02/10/2014 11:07:39	548AB2A9AE1598309180122830C5470C26434CAC	Three Way is the Best Way
02/10/2014 10:57:22	075F4C7EE0EA4929091035DD533F85D5BB120D6F	It Has Always Been You
02/07/2014 17:44:32	2DD8681E585A4C365B2BC5C1FDF5D642B1A3CABF	So Young
02/07/2014 17:32:48	6D93BC253AF031F2FA798F4F3CF33D3D519118C7	Creamy
02/07/2014 17:31:34	2460533F6C46CE5A07F70768C6F520EFF3BB2304	Ready or Not
01/19/2014 21:11:56	87B2FCBF0D0D56F9139CA2CC2B25C636A997A51B	Getting Ready For You

EXHIBIT A

SNY24

Total Statutory Claims Against Defendant: 22

EXHIBIT A

SNY24

Copyrights-In-Suit for IP Address 69.206.165.130

ISP: Time Warner Cable

Location: Goshen, NY

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
A Thought of You Part 2	PA0001895665	05/13/2014	05/16/2014	05/13/2014
Creamy	PA0001874617	01/02/2014	01/05/2014	02/07/2014
Deep Blue Passion	PA0001885168	03/21/2014	03/24/2014	03/21/2014
Double Tease	PA0001892183	04/17/2014	04/29/2014	04/18/2014
Epic Love	PA0001898091	05/25/2014	06/06/2014	05/25/2014
Erotic Stretching and Sex	PA0001862293	09/08/2013	09/08/2013	08/30/2014
Getting Ready For You	PA0001874744	01/10/2014	01/15/2014	01/19/2014
Group Sex	PA0001892182	04/19/2014	04/29/2014	04/19/2014
High School Dropouts	PA0001871934	11/21/2013	11/29/2013	05/31/2014
It Has Always Been You	PA0001878424	02/06/2014	02/13/2014	02/10/2014
Just the Three of Us	PA0001880670	02/21/2014	02/27/2014	04/01/2014
Lovers Way	PA0001905141	06/21/2014	07/02/2014	06/21/2014
My Days in Rome	PA0001886187	03/28/2014	04/02/2014	04/05/2014
My Naughty Girl	PA0001868094	10/28/2013	11/01/2013	08/30/2014
Pretty Little Belle	PA0001878425	02/09/2014	02/13/2014	04/16/2014
Ready or Not	PA0001852675	06/18/2013	06/27/2013	02/07/2014
Risky Business	PA0001878455	02/01/2014	02/18/2014	03/02/2014
Russian Connection	PA0001886189	03/30/2014	04/02/2014	04/05/2014
Sexy En Noir	PA0001909783	08/22/2014	08/26/2014	09/01/2014
So Young	PA0001877472	01/25/2014	01/31/2014	02/07/2014
Tantric Massage	PA0001892180	04/25/2014	04/29/2014	04/27/2014

EXHIBIT B

SNY24

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Three Way is the Best Way	PA0001878426	02/04/2014	02/13/2014	02/10/2014

Total Malibu Media, LLC Copyrights Infringed: 22